IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 1727 OF 2006

Vinay Raghunath Sabnis & Ors..... Petitioners.

Versus

Mrs.Sandhya Rajeev Thattee & Ors..... Respondents.

None for the Petitioners.
Mr. S. D. Mogre for Respondent Nos.1 & 4.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

None present for the petitioner. Mr. S. D. Mogre, learned Counsel appears for respondent nos.1 and 4.

2. R. A. E. Suit No. 109/343 of 1994 which was filed for seeking decree of eviction on the ground of non-payment of difference in increases in permitted increases came to be allowed by the learned Judge, Small Causes Court at Mumbai. By the judgment and order passed by the learned Judge on 25th July, 2003 the suit was decreed and the defendants were directed to handover vacant and peaceful possession of the suit

premises to the plaintiffs within six months. Aggrieved by the said judgment and order, the defendant filed Appeal No. 225 of 2003 which came to be dismissed by the learned Division Bench of the Small Causes Court at Mumbai vide its judgment and order dated 17th December, 2005.

3. In this writ petition the judgment and order passed by the lower appellate court confirming the judgment and order passed by the learned Judge, Small Causes Court at Mumbai, under the Bombay Rents Hotels & Lodging House Rates (Control) Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks from today, the period of pendency of this writ

petition be taken into consideration for condonation of delay, if any.

5. The ad-interim order granted earlier will continue to operate for a period of two weeks more from today.

6. Annexures to the petition memo be returned, if applied for.

7. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)